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PTO IDENTIFIER: Application Number 10/621,629-Conf. #1873  
Patent Number

Inventor: Joseph T. O'Brien et al.

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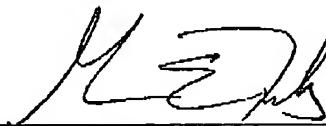
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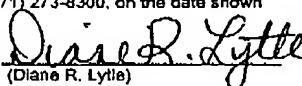
<b>TRANSMITTAL OF AMENDED APPEAL BRIEF</b>		Docket No. 65783-0029
In re Application of: Joseph T. O'Brien et al.		
Application No. 10/621,629-Conf. #1873	Filing Date July 17, 2003	Examiner V. L. MacArthur
Group Art Unit 3679		
Invention: PILLAR SHIELD FOR SECURING A WIRE HARNESS		
<b><u>TO THE COMMISSIONER OF PATENTS:</u></b>		
Transmitted herewith is the Amended Appeal Brief in this application, with respect to the Notice of Appeal		
filed: <u>December 12, 2005</u>		
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 Glenn E. Forbis Attorney Reg. No. : 40,610 RADER, FISHMAN & GRAUER PLLC 39533 Woodward Avenue Suite 140 Bloomfield Hills, Michigan 48304 (248) 594-0636		Dated: <u>May 10, 2006</u>
<div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>Appeal Brief Transmittal</b>          I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.          Dated: May 10, 2006      Signature: <u>Diane R. Lytle</u> (Diane R. Lytle)       </div>		

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(Diane R. Lytle)Docket No.: 65783-0029  
(PATENT)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Joseph T. O'Brien et al.

Application No.: 10/621,629

Confirmation No.: 1873

Filed: July 17, 2003

Art Unit: 3679

For: PILLAR SHIELD FOR SECURING A WIRE  
HARNESS

Examiner: V. L. MacArthur

AMENDED APPEAL BRIEF

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief dated April 11, 2006, Applicants have revised the Appeal Brief filed February 13, 2006, and respectfully submit the present amended Appeal Brief, which is believed to conform to 37 CFR § 41.37.

This appeal is from the decision of the Examiner dated September 12, 2005 ("Final Office Action"), finally rejecting claims 1-12 and 17-28, which are reproduced in an Appendix to this brief. The Notice of Appeal was filed on December 12, 2005. This application was filed on July 17, 2003.

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**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal is Yazaki North America, Inc. having its principal place of business at 6801 Haggerty Road, Canton, Michigan 48187.

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**II. RELATED APPEALS AND INTERFERENCES**

Applicants (hereinafter, "Appellants") are not aware of any related appeals or interferences that would affect the Board's decision on the current appeal.

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**III. STATUS OF CLAIMS**

Claims 1-12 and 17-29 are pending. Claims 1-12 and 17-28 stand finally rejected. Claims 1-5, 7-12, 17-21 and 23-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mizusawa (U.S. Patent No. 4,488,206). Claims 6 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizusawa in view of the Appellants' admitted prior art (Figures 1 and 2). Claim 29 was allowed. Appellants appeal from the final rejection of claims 1-12 and 17-28, which are presented in the Claims Appendix.

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**IV. STATUS OF AMENDMENTS**

There are no outstanding after-final amendments to the claims.

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**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The present application includes claims directed to a plug and a pillar shield for securing a wire harness. The following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, as required by 37 C.F.R. § 41.37(c)(1)(v). The following explanation is not intended to be used to construe the claims, which are believed to speak for themselves, nor do Appellants intend the following explanation to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claims would otherwise be entitled. References to the Specification herein are intended to be exemplary and not limiting.

Independent claim 1 recites a plug that is inserted into and encloses an opening within a wall of a hollow post or pillar and for securing a wire harness running through the pillar. (See Appellants' specification, page 3, paragraph [0008], lines 1-2; page 4, paragraph [0012], lines 4-6). Projecting out from the base of the plug are at least two clips or locks that resiliently engage the edge of the opening and secure the plug within the opening. At least one of the locks is located at one end of the plug; while at least one other of the locks is located at the opposite end of the plug. Each of the locks includes a head or end portion that is generally rounded or arcuate in shape, which assists in the alignment of the plug. (See Appellants' specification, pages 4 and 5, paragraph [0013], lines 2-10).

The base of the plug further includes two or more tensioners projecting out from the base that resiliently engage the edge of the opening when the plug is inserted into and encloses the opening. At least one tensioner is located along one side of the base or edge of the plug; while at least one other of the tensioners is located along the opposite side of the base. In one embodiment, a first tensioner is located along a first side of the base, while a second tensioner is

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located along a second side of the base directly opposite from the first tensioner. (See Appellants' specification, page 5, paragraph [0014], lines 1-11).

Also located along each side of the base is a stabilizer that resiliently engages the wall when the plug is secured in the opening. Each stabilizer comprises a pair of protrusions that extend out from the base in a manner such that they tend to "push" the shield away from the wall while any forces they generate that run parallel to the base are cancelled out by one another. (See Appellants' specification, page 6, paragraph [0016], lines 1-6).

The plug further includes one or more fasteners for securing a wire harness, whether the wire harness transitions from outside the pillar into the pillar or is fastened completely within the pillar. (See Appellants' specification, page 6, paragraph [0017], lines 1-3).

As force is applied to position the plug within the opening, both the locks and tensioners resiliently engage the edge of the opening. At a predetermined depth through the opening, the locks engage the edge such that the shield becomes "locked" into place and cannot be readily withdrawn from the opening. While in this state, each of the resilient locks is compressed up against the edge. As a result of being compressed up against the edge, each of the locks generates a force that tends to push the shield away from the portion of the edge that engages the lock. As there is at least one lock located at each end of the shield, opposing forces are generated. These opposing forces generated by the compressed locks tend to counteract each other, causing the shield to align within the opening along a first axis, e.g., Y-axis, that is generally parallel with the wall. (See Appellants' specification, page 7, paragraph [0019], lines 1-12).

Upon resiliently engaging the edge of the opening, the tensioners also become compressed up against the edge. Upon being compressed, each of the tensioners generates a

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force that tends to push the shield away from the portion of the edge that engages the tensioner. As one or more of the tensioners is placed along both of the two opposing sides of the base, the forces generated by the tensioners tend to counteract each other. As a result of these opposing forces, the shield tends to align within the opening along a second axis, e.g., X-axis, which is also generally parallel with the wall. (See Appellants' specification, page 8, paragraph [0020], lines 1-8).

As the shield is inserted into the opening, the stabilizers resiliently engage a portion of the wall surrounding the opening. In contrast to the locks and tensioners, the stabilizers secure the shield along a third axis that lies perpendicular to the first and second axes. (See Appellants' specification, page 8, paragraph [0021], lines 1-2 and paragraph [0024], lines 1-2).

The above referenced summary for independent claim 1 is also applicable to independent claims 17, 25, and 27, which recite a pillar shield for securing a wire harness running within a pillar that includes an opening with an edge. (See Appellants' specification, page 4, paragraph [0012], lines 1-8). Claims 17, 25, and 27 further include that the shield includes a base that is generally planar in shape. (See Appellants' specification, page 4, paragraph [0013], lines 1-2).

With continued reference to the above summary for claim 1, independent claim 17 specifically recites a pillar shield with a generally planar-shaped body having at least two clips, at least two tensioners, at least two stabilizers and at least one fastener. (See Appellants' specification, pages 4 and 5, paragraph [0013], lines 2-10; page 5, paragraph [0014], lines 1-11; page 6, paragraph [0016], lines 1-6; and page 6, paragraph [0017], lines 1-3).

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Similarly, independent claim 25 specifically recites a pillar shield with a generally planar-shaped body having at least two clips, at least two stabilizers and at least one fastener. (See Appellants' specification, pages 4 and 5, paragraph [0013], lines 2-10; page 6, paragraph [0016], lines 1-6; and page 6, paragraph [0017], lines 1-3). And finally, independent claim 27 specifically recites a pillar shield with a generally planar-shaped body having at least two clips, at least two tensioners, and at least one fastener. (See Appellants' specification, pages 4 and 5, paragraph [0013], lines 2-10; page 5, paragraph [0014], lines 1-11; and page 6, paragraph [0017], lines 1-3).

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**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

In the Final Office Action, the following rejections were made:

(A) Claims 1-5, 7-12, 17-21 and 23-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mizusawa (U.S. Patent No. 4,488,206).

(B) Claims 6 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizusawa in view of the Appellants' admitted prior art (Figures 1 and 2).

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**VII. ARGUMENT****Rejections under 35 U.S.C. § 102**

The Examiner rejected claims 1-5, 7-12, 17-21 and 23-28 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,488,206 to Mizusawa. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). See M.P.E.P. § 2131. As set forth below, Mizusawa does not teach or suggest each and every element of claims 1-5, 7-12, 17-21, and 23-28. Accordingly, Appellants respectfully request the Board to reverse the rejection of these claims.

**A. Mizusawa fails to Teach or Suggest Each and Every Limitation of Independent Claims 1, 17, 25, and 27.****Claims 1 and 17**

Independent claim 1 is directed to a plug that inserts into an opening in the wall of a hollow post. The plug encloses the opening and secures a wire harness that runs within the hollow post. The plug includes at least two locks projecting from the surface of the plug. The locks resiliently engage an edge of the opening and align the plug along a first axis. The plug further includes at least two tensioners, and at least one stabilizer projecting from the surface of the plug. The tensioners resiliently engage an edge of the opening and align the plug along a second axis. The stabilizer resiliently engages the wall of the hollow post "exerting tension within the plug along a third axis." Mizusawa does not teach or suggest a stabilizer that exerts tension along a third axis, as required by claim 1.

Similarly, independent claim 17 is directed to a pillar shield for securing a wire harness running within a pillar. The pillar shield includes at least two clips, at least two tensioners, and at least two stabilizers, each projecting out from the body of the pillar shield. The clips align the

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pillar shield within the opening of the pillar along a first axis. The tensioners are resiliently compressed by an edge of the opening aligning the pillar shield along a second axis. The stabilizers are resiliently compressed by the wall of the pillar "generating tension, directed along a third axis, between said pillar shield and the wall of the pillar." Like claim 1, Mizusawa does not teach or suggest a stabilizer that generates tension directed along a third axis, as required by claim 17.

Rather, Mizusawa discloses a fixing structure for securing a lamp housing to a body panel of a vehicle. The lamp housing is defined by a lamp case having a flange that extends outwardly from the edge of the lamp case. The flange is designed to engage the body panel at the periphery edge of the opening. (See Mizusawa, col. 3, lines 53-58) The lamp housing further includes positioning ribs that protrude from the side surfaces of the lamp housing. (*Id.* at col. 4 lines 32-56). Affixed between these ribs are plastic fastener members that engage the opening of the vehicle body panel to secure the lamp housing. The fasteners protrude slightly above the ribs to engage the edge of the body panel. (*Id.* at col. 4, lines 57- col. 5 line 16). When the lamp housing is inserted into the body panel opening, a seal packing (resembling a gasket) is provided between the flange of the lamp housing and the body panel. The Examiner alleges (See Final Office Action, pages 2 and 5) that the seal packing is the "stabilizer" of claims 1 and 17. Thus, according to the Examiner, the seal packing provided between the body panel and the lamp housing of Mizusawa teaches both a stabilizer for "exerting tension within the plug along a third axis," as required by claim 1, and a stabilizer for "generating tension, directed along a third axis," as required by claim 17. Appellants respectfully disagree. As explained by Mizusawa,

...the resilient pieces 17 of the fastener members 14 which protrude from the ribs 20 engage the edge of the insertion hole 6.

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Then, they are pushed inwardly by the edge as they slip past the edge of the hole. About the time that the seal packing 12 is nipped with moderate pressure between the flange 4 and the body panel 5, the resilient pieces 17 slide past the rear side of the edge of the insertion hole and regain their original shape, causing the engaging faces 18 thereof to come into fast engagement with the rear side of the edge of the insertion hole. (See Mizusawa, col. 5, line 64 – col. 6, line 7).

In other words, it is the fastener members that provide the moderate pressure to “nip” the seal packing, not the seal packing itself, as alleged by the Examiner. (See Final Office Action, Response to Arguments, page 11). Indeed, the seal packing is wholly incapable of exerting or generating a tension along a third axis, as is required by claims 1 and 17. Moreover, there is simply no teaching or suggestion in Mizusawa that the seal packing exerts or generates a tension along a third axis. At most, Mizusawa teaches that the seal packing provides some level of sealing between the lamp housing and the body panel. Therefore, for at least this reason, claims 1 and 17 are not anticipated by the Mizusawa patent and are in condition for allowance. Similarly, dependent claims 2-12 and 18-24 are also in condition for allowance, for at least the same reason. Accordingly, Appellants request the Board to reverse the rejection of these claims.

Claims 17, 25, and 27

Independent claims 17, 25, and 27 are directed to a pillar shield for securing a wire harness running within a pillar. Each of these claims recites a shield having “a generally planar shaped body” designed to close the opening in the wall of the pillar. The lamp housing disclosed in Mizusawa does not have a generally planar shaped body, as required by claims 17, 25, and 27.

It is well settled that to anticipate a claim, the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v.*

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*Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Further, the identical invention must be shown in as complete detail as is contained in the claim.

*Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989),

*Emphasis Added.*

As discussed above, Mizusawa discloses a fixing structure for securing a lamp housing to a body panel of a vehicle. The lamp housing includes a lamp case shaped like a box to encase a lamp. (See Mizusawa, col.1, lines 25-28). Further, Mizusawa describes its fixing structure as being "applicable to any lamp housing 1 on the condition that the housing is provided with such flanges 4 as mentioned above and also with a lamp case 2." In other words, Misusawa has limited the lamp housing to a non-planar, box-like structure so that it is capable of encasing a lamp. Although Appellants concede that individual surfaces of the lamp case may be generally planar, the lamp housing as a whole, which the Examiner alleges is the "generally planar shaped body" of claims 17, 25, and 27, is clearly non-planar. (See Final Office Action, pages 4, 7, and 9). Therefore, the lamp housing of Mizasawa cannot possibly anticipate claims 17, 25, and 27, which require "a generally planar shaped body." Accordingly, independent claims 17, 25, and 27, and their dependent claims 18-24, 26, and 28, are patentable over the cited art and in condition for allowance. For at least the reasons set forth above, Appellants respectfully request reversal of the rejections.

#### **Rejections under 35 U.S.C. § 103**

Claims 6 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,488,206 to Mizusawa in view of Applicant's admitted prior art (Figures 1 and 2). Applicant respectfully traverses the rejection.

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Claims 6 and 22, which depend from independent claims 1 and 17, respectfully, further define the plug (claim 1) and the pillar shield (claim 22) as a “one-piece monolithic structure.” In addition to being patentable as depending on an allowable base claim, claims 6 and 22 are separately patentable because the Examiner has failed to establish a *prima facie* case of obviousness with respect the Mizasawa patent, and Applicant’s Figures 1 and 2. *Prima facie* obviousness requires a “showing of some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). In this case, there is no teaching or suggestion in Mizasawa to construct the lamp housing as a one-piece structure. In fact, the Mizasawa patent and Figures 1 and 2 are incompatible. The lamp housing includes a lamp case, which inherently houses a lamp. In fact, as set forth above, Mizusawa limited the lamp housing to structures capable of housing a lamp. Indeed, the lamp housing would be incapable of housing a lamp if it was a one-piece structure. Therefore, for any of these reasons, dependent claims 6 and 22 are in condition for allowance. Appellants respectfully request the Board to reverse these rejections.

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**VIII. CONCLUSION**

In view of the foregoing, it is submitted that the final rejections of the pending claims are improper and should not be sustained. Therefore, a reversal of the final rejections of September 12, 2005 is respectfully requested.

Appellants believe no fee is due with this paper. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 65783-0029, for any fee due with this Amended Appeal Brief. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to the above account.

Dated: 5-10-06

Respectfully submitted,

By, 

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**APPENDIX A**

A complete listing of the claims that are subject of this Appeal is as follows:

1. A plug inserted into and enclosing an opening within a wall of a hollow post and securing a wire harness running within said hollow post, comprising:

at least two locks projecting out from a surface of said plug and securing said plug within the opening, at least one of said locks being located at or near a first end of said plug, and at least one of said locks being located at or near a second end of said plug, said locks resiliently engaging an edge of the opening and aligning said plug within the opening along a first axis;

at least two tensioners projecting out from said surface of said plug and resiliently engaging the edge of the opening and aligning said plug within the opening along a second axis, at least one of said tensioners being located at or near a first edge of said plug, and at least one of said resilient tensioners being located at or near a second edge of said plug;

at least one stabilizer projecting out from said surface of said plug and resiliently engaging the wall, thereby exerting tension within the plug along a third axis; and

at least one fastener for securing the wire harness to said plug.

2. The plug according to claim 1, wherein said first and second axes are approximately perpendicular to one another.

3. The plug according to claim 1, wherein said third axis is perpendicular to said first and second axes.

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4. The plug according to claim 1, wherein said first and second ends of said plug lie opposite to one another, and said first and second edges of said plug lie opposite to one another.
5. The plug according to claim 1, wherein said hollow post is a pillar of an automobile.
6. The plug according to claim 1, wherein said plug is a one-piece monolithic structure.
7. The plug according to claim 1, wherein said at least one stabilizer comprises a pair of resilient protrusions extending out from said surface of said plug.
8. The plug according to claim 1, further comprising at least two stabilizers, with at least one of said stabilizers located near said first edge of said plug, and at least one of said stabilizers located near said second edge of said plug.
9. The plug according to claim 1, wherein said fastener comprises at least one clip that projects out from said surface of said plug and secures the wire harness.
10. The plug according to claim 1, wherein said fastener comprises a tie that wraps around the wire harness and then attaches to said plug.
11. The plug according to claim 1, wherein each of said at least two locks initially engages the edge of the opening with a generally rounded end portion that promotes alignment of said plug respective to the opening.

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12. The plug according to claim 1, wherein each of said at least two tensioners initially engages the edge of the opening with a generally rounded end portion that promotes alignment of said plug respective to the opening.

13. (Canceled)

14. (Canceled)

15. (Canceled)

16. (Canceled)

17. A pillar shield for securing a wire harness running within a pillar, the pillar including a wall having an opening with an edge, the pillar shield comprising:

a generally planar-shaped body designed to close off the opening within the wall of the pillar;

at least two clips projecting out from said body of said pillar shield, each of the at least two clips having resilient locks configured for securing said pillar shield within the opening in the wall and for being compressed by the edge of the opening to align said pillar shield within the opening along a first axis;

at least two tensioners projecting out from said body of said pillar shield, said at least two tensioners each having a portion for being resiliently compressed by the edge of the opening, thereby aligning said pillar shield within the opening along a second axis;

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at least two stabilizers projecting out from said body of said pillar shield, said at least two stabilizers arranged to be resiliently compressed by the wall of the pillar, thereby directing a force along a third axis tending to push the shield away from the wall; and  
at least one fastener for attaching the wire harness to said pillar shield.

18. The pillar shield according to claim 17, wherein said first axis lies approximately ninety degrees from said second axis.

19. The pillar shield according to claim 17, wherein said third axis lies perpendicular to said first and second axes.

20. The pillar shield according to claim 17, wherein at least one of said clips is located at an end of said pillar shield, and at least one of said clips is located at an opposite end of said pillar shield.

21. The pillar shield according to claim 17, wherein at least one of said tensioners is located nearby an edge of said pillar shield, and at least one of said tensioners is located nearby an opposite edge of said pillar shield.

22. The pillar shield according to claim 17, wherein said pillar shield is a one-piece monolithic structure.

23. The pillar shield according to claim 17 wherein said fastener comprises at least one clip projecting out from said body of said pillar shield and securing the wire harness.

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24. The pillar shield according to claim 17, wherein said fastener comprises a tie that wraps around the wire harness and then attaches to said pillar shield.

25. A pillar shield for securing a wire harness running within a pillar, the pillar including a wall having an opening with an edge, the pillar shield comprising:

a generally planar-shaped body designed to close off the opening within the wall of the pillar;

at least two clips projecting out from said body of said pillar shield each of the at least two clips having resilient locks configured for securing said pillar shield within the opening in the wall and for being compressed by the edge of the opening to align said pillar shield within the opening along a first axis;

at least two stabilizers projecting out from said body of said pillar shield, said at least two stabilizers arranged to be resiliently compressed by the wall of the pillar, thereby directing a force along a second axis tending to push the shield away from the wall; and

at least one fastener for attaching the wire harness to said pillar shield.

26. The pillar shield according to claim 25, wherein said first axis lies approximately ninety degrees from said second axis.

27. A pillar shield for securing a wire harness running within a pillar, the pillar including a wall having an opening with an edge, the pillar shield comprising:

a generally planar-shaped body designed to close off the opening within the wall of the pillar;

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at least two clips projecting out from said body of said pillar shield each of the at least two clips having resilient locks configured for securing said pillar shield within the opening in the wall and for being compressed by the edge of the opening to align said pillar shield within the opening along a first axis;

at least two tensioners projecting out from said body of said pillar shield, said at least two tensioners each having a portion for being resiliently compressed by the edge of the opening, thereby aligning said pillar shield within the opening along a second axis; and

at least one fastener for attaching the wire harness to said pillar shield.

28. The pillar shield according to claim 27, wherein said first axis lies approximately ninety degrees from said second axis.

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X. EVIDENCE APPENDIX

NONE.

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XI. RELATED PROCEEDINGS APPENDIX

NONE.